

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CITY OF SEATTLE,

Defendant.

No. 12-cv-1282-JLR

THE ESTATE OF CHARLEENA  
LYLES' EMERGENCY MOTION TO  
INTERVENE FOR THE PURPOSES  
OF PROVIDING ADDITIONAL  
CRITICAL INFORMATION TO THE  
COURT

**NOTE ON MOTION CALENDAR:  
December 5, 2017**

**I. Relief Requested.**

Comes now the Estate of Charleena Lyles, through its Personal Representative Commissioner Eric Watness through its undersigned counsel; and moves the Court for an Order allowing it to intervene on an emergency basis, in the above entitled matter for the purpose of providing critical information relating to the circumstances leading up to the shooting death of Charleena Lyles by the Seattle Police Department and its officers on June 18, 2017.

**II. Procedural history regarding the Estate of Charleena Lyles.**

The Estate of Charleena Lyles has been in legal flux until recently and unable to more timely bring this motion to intervene. In particular, the Personal Representative was removed and replaced; numerous interrelated guardianship and guardian ad litem proceedings were and

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1 have been instituted on behalf of the four surviving minor children of Charleena Lyles; and until  
 2 this past week, the PR of the Estate was still evaluating its legal counsel.

3 The Estate of Charleena Lyles has not yet been given access to the findings of the SPD's  
 4 Force Review Board which have been quoted by the Seattle Times but not yet verified by the  
 5 Department. An internal investigation into Officer Anderson's failure to carry his taser has not  
 6 yet been completed. Full discovery has not been produced by the SPD. However, the Estate of  
 7 Charleena Lyles has commenced its own investigation. Now, in light of this Court's request for  
 8 additional information into the circumstances leading up to the shooting death of Charleena  
 9 Lyles, her Estate brings this emergency motion to intervene in the above cause solely for the  
 10 purpose of providing additional critical information to the Court so that it can fully review this  
 11 matter.

### 12 **III. Summary of Additional Facts Sought to be Introduced if Intervention is Allowed.**

13 The Estate of Charleena Lyles maintains that unless it is able to provide critical evidence  
 14 of factual circumstances leading up to her shooting death; that the Court will only receive a  
 15 carefully tailored one-sided analysis by the SPD. The Estate would like to elucidate the  
 16 following key areas of concern:

17 Seven months before her death, Charleena Lyles was a formerly homeless mother of four  
 18 children, deemed to be "in crisis" and placed into the Brettler Family Place in Magnuson Park  
 19 which is operated by Solid Ground. She was well known by the police both due to her repeated  
 20 victimization in domestic violence attacks and also her deteriorating mental health status.

21 Between January 2017 and June 2017, twenty three (23) calls were made from Charleena  
 22 Lyles' apartment, including: 10 domestic disturbances; 4 domestic assaults, 3 reports of  
 23 burglary, 2 child abuse/neglect, 1 threat, 1 welfare check, 1 missing child, and 1 follow up on a

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1 prior disturbance. These calls were extraordinary in number and demonstrate the Seattle Police  
2 Department's (SPD) notice of Charleena Lyles' vulnerable status.

3 Less than two weeks before her shooting death, on June 5, 2017, Charleena Lyles called  
4 911 and reported another domestic violence attack. Shortly after arrival two officers (Legg and  
5 Bauer) requested immediate assistance. Charleena Lyles armed herself with extra-long, metal  
6 shears. She was making unusual comments such as wanting to "morph into a wolf" and talked  
7 about "cloning her daughter." She was sure the police officers were devils and also members of  
8 the KKK. The officers determined she was suffering a mental health crisis and engaged in de-  
9 escalation techniques. She was instructed to drop the shears and move away from them. She did  
10 so. As a result of this incident Charleena Lyles was jailed and appeared in Mental Health Court  
11 on Tuesday, June 13, 2017 where she was ordered to be released from jail the next day with  
12 conditions.

13 Four days after she was released from jail, on Sunday June 18, 2017, at 8:55 a.m. in the  
14 morning, Charleena Lyles called 911 for help due to a burglary. SPD Officer Anderson who was  
15 hired by SPD in 2015 and had only eight hours of crisis training responded to this call. He  
16 remembered that he had been to the unit before. He noted that Charleena Lyles had been flagged  
17 as an officer safety caution. He called Officer McNew for additional assistance. Officer McNew  
18 was hired by the SPD in 2008 and had received forty hours of advanced crisis training (CIT).  
19 Officer McNew asked if Charleena Lyles had been "flagged mental" and Officer Anderson  
20 replied: no - just an officer safety caution. Regardless if this response was accurate or not,  
21 Officer Anderson told Officer McNew that Charleena Lyles had very recently exhibited behavior  
22 with other officers that involved brandishing shears, "talking all crazy" and making "weird  
23 statements."

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1 The officers spent zero time coming up with any strategy or plan, in terms of interacting  
 2 with Charleena Lyles or to ensure her safety and that of her young children. Instead they simply  
 3 agreed that they would make sure she was not between them and the door (a logistic which they  
 4 failed to implement).

5 During the officers' visit, Charleena Lyles was overcome with a mental health  
 6 exacerbation. The officers completely lost their composure. This was complicated by the fact  
 7 that Officer Anderson violated SPD rules by leaving his taser in his locker and could not use this  
 8 tool when instructed to do so by Officer McNew.

9 The officers shouted a few times for Charleena Lyles to "get back," though this was  
 10 confusing since they were on either side of her. They forgot to tell her to drop her weapon.  
 11 Officer McNew was so rattled he forgot what to say. After making no physical attempt to  
 12 disarm Charleena Lyles, the officers shot and killed her in front of two of her children and within  
 13 the hearing of a third child. The Medical Examiner determined that Charleena Lyles was shot  
 14 seven times both from the front and from the back.

#### 15 **IV. Issue**

16 Should the Court permit intervention by The Estate of Charleena Lyles for the purpose of  
 17 allowing it to provide critical evidence regarding the facts and circumstances that led up  
 to the shooting death of Charleena Lyles on June 18, 2017.

#### 18 **V. Legal Authority**

19 Fed R. Civ. P. 24(a)(2) grants a party the right to intervene if (1) its motion is "timely,"  
 20 (2) it "ha[s] a significantly protectable interest relating to the property or transaction that is the  
 21 subject of the action"; (3) it is "situated such that the disposition of the action may impair or  
 22 impede the party's ability to protect that interest"; and (4) it is "not adequately represented by  
 23

existing parties.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003) (citing Fed. R. Civ. P. 24(a)(2)).

First, the motion is as timely as possible given the replacement of the Personal Representative.

Second, a party has a protectable interest in the outcome of a suit that might, “as a practical matter, bear significantly on the resolution of [its] claims” in a “related action.” *United States v. Stringfellow*, 783 F.2d 821, 826 (9th Cir. 1986), *vacated on other grounds sub nom. Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 107 S. Ct. 1177, 94 L. Ed. 2d 389 (1987); *see, e.g., In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 536 F.3d 980, 986-87 (9th Cir. 2008) (holding intervention proper where “an issue [the intervenor] raised in one proceeding... lands in another proceeding for disposition”); *U.S. ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1396 (9th Cir. 1992) (finding no “serious[] dispute” that a party may intervene in a suit that might “preclude [it] from proceeding with claims” in a separate proceeding).

Third, the Estate of Charleena Lyles and the City of Seattle are now in active litigation in part over these same issues in King County Superior Court Cause No. 17-2-23731-1. This Court’s request for the City to provide more information into Charleena Lyles’ shooting death for purpose of reviewing its compliance with the 2012 Consent Decree should be balanced with information provided by her Estate, otherwise the instant case “may as a practical matter impair or impede [an applicant’s] ability to safeguard [its] protectable interest.” *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 862 (9th Cir. 2016).

The final requirement of the test for intervention is “minimal,” and is satisfied so long as “the applicant can demonstrate that representation of its interests ‘may be’ inadequate.” *Citizens*

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1 *for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011). Three factors  
 2 are relevant in conducting this inquiry: “(1) whether the interest of a present party is such that it  
 3 will *undoubtedly* make *all* of a proposed intervenor’s arguments; (2) whether the present party is  
 4 capable and willing to make such arguments; and (3) whether a proposed intervenor would offer  
 5 any necessary elements to the proceeding that other parties would neglect.” *Citizens for*  
 6 *Balanced Use*, 647 F.3d at 898 (emphases added). Here, the SPD’s interests are directly adverse  
 7 to those of the Estate of Charleena Lyles thus satisfying this last prong.

8 Alternatively, The Estate of Charleena Lyles should be permitted to intervene in this  
 9 matter pursuant to Rule 24(b). Permissive intervention typically requires “(1) an independent  
 10 ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between  
 11 the movant’s claim or defense and the main action.” *Freedom from Religion Found., Inc. v.*  
 12 *Geithner*, 644 F.3d 836, 843 (9th Cir. 2011).

13 DATED this 5th day of December, 2017.

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 17 Karen K. Koehler, WSBA #15325  
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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of filing to the following persons:

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